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Attorneys for Defendants  
THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA (erroneously sued herein as  
INSTITUTE OF GOVERNMENTAL STUDIES  
AT THE UNIVERSITY OF CALIFORNIA AT  
BERKELEY) and NICK ROBINSON

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEITH GALIANO,

Plaintiff,

vs.

INSTITUTE OF GOVERNMENTAL STUDIES AT  
THE UNIVERSITY OF CALIFORNIA AT  
BERKELEY, an unincorporated association, NICK  
ROBINSON, DOES 1-5, inclusive

Defendants.

CASE NO. C07 05557 MJJ

**DEFENDANTS THE REGENTS'  
AND NICK ROBINSON'S NOTICE  
OF MOTION AND MOTION TO  
DISMISS  
(FRCP 12(b)(1) and (6))**

Accompanying Documents:  
**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS; PROPOSED  
ORDER**

Date: February 26, 2008  
Time: 9:30 a.m.  
Courtroom: 11, 19<sup>th</sup> Floor  
Judge: Hon. Martin J. Jenkins

**NOTICE OF MOTION TO DISMISS**

TO PLAINTIFF, IN PRO SE:

PLEASE TAKE NOTICE that defendants THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA (erroneously sued herein as the INSTITUTE OF GOVERNMENTAL STUDIES  
AT THE UNIVERSITY OF CALIFORNIA AT BERKELEY) and NICK ROBINSON will and  
hereby do move the Court to dismiss plaintiff's claims under Federal Rules of Civil Procedure  
12(b)(1) and (6) for lack of subject-matter jurisdiction and failure to state a claim upon which

1 relief can be granted on the following grounds:

2 1. The Institute of Governmental Studies Library ("IGS Library") is a unit of the  
3 University of California at Berkeley and therefore, the proper legal entity is The Regents of the  
4 University of California ("The Regents").

5 2. The Regents, a State entity, is entitled to sovereign immunity under the Eleventh  
6 Amendment and further, is not considered a "person" under 42 U.S.C. section 1983 or California  
7 Civil Code section 52.1 ("Bane Act"). Plaintiff's sections alleging violations of these statutes are  
8 barred.

9 3. Plaintiff fails to allege a violation of free speech rights because the IGS Library  
10 has the right to impose speech restrictions, such like the one of which Plaintiff complains.  
11 Accordingly, because he has not alleged a violation of free speech rights, his claim of retaliation  
12 based on protected speech cannot survive.

13 4. Plaintiff also fails to allege a viable Equal Protection Rights claim because he  
14 does not identify any acts of discrimination based on any protected characteristic and further  
15 does not allege that defendants acted irrationally without a legitimate interest in asking him to  
16 bring noise complaints to the IGS Library staff.

17 5. Defendant Nick Robinson is entitled to qualified immunity because plaintiff fails  
18 to articulate that IGS Library patrons have a clearly established right to speak with other library  
19 patrons and because the IGS Library enjoys the privilege of selectively enforcing rules related to  
20 its use.

21 6. Plaintiff's Bane Act claim fails because he does not articulate facts that Defendant  
22 Robinson engaged in speech that would create a reasonable fear of violence against him and  
23 because plaintiff did not plead a violation of any valid constitutional right.

24 7. Finally, plaintiff's claims for declaratory and injunctive relief cannot survive  
25 because he did not properly allege a violation of 42 U.S.C. section 1983.

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1 The motion is based upon this Notice of Motion and Motion and the Memorandum of  
2 Points and Authorities in Support Thereof, filed herewith, and the pleadings and papers on file  
3 herein.

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5 Dated: January 18, 2008

GORDON & REES LLP

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7 By: 

Nicole C. Harvat  
Attorneys for Defendants THE  
REGENTS OF THE UNIVERSITY OF  
CALIFORNIA and NICK ROBINSON

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